SH2285143

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COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

A Tradition of Service

DATE: February 19, 2013
FILE NO:

OFFICE CORRESPONDENCE

FROM: MICHAEL J. ROTHANS, COMMANDER
FIELD OPERATIONS REGION II

TO: ALICIA E. AULT, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS:

Case Number:	SH2285 143
Incident:	Hit Shooting
Incident Date:	March 26, 2011
Unit:	Temple Station
Suspects:	Mark Lewis, MW/10-02-83 Aaron Beierschmitt, MW/04-15-86
Involved Employee:	Deputy Robert Alvarez, #[redacted]
EFRC Date:	February 14, 2013

The Executive Force Review Committee consisting of Commander Michael Rothans, Commander David Fender, and Commander Buddy Goldman met and reviewed the above case.

FORCE POLICY RELATING TO INCIDENT:

Department members may use deadly force in self-defense or in the defense of others, only when they reasonably believe death or serious physical injury is about to be inflicted upon themselves or others.

FINDINGS:

A deputy, shortly after he got off duty at Temple Sheriff's Station, picked up his [redacted] and was driving to a Del Taco to get some food at approximately 0155 hours. As the deputy neared the restaurant, there was a vehicle traveling at a high rate of speed behind him. The occupants of the vehicle began to honk their horn and yell at him.

The deputy pulled into the Del Taco parking lot and into the drive-thru lane to order food. The suspect vehicle pulled behind him and before the deputy had time to order, the suspects began to yell and make threats at him and his [redacted]. The deputy was unable to drive forward because there was a vehicle at the checkout window and a large curb to his right, preventing him from driving out of the drive-thru lane.

The two suspects exited their vehicle and began to approach the deputy, who was still seated in his vehicle. The deputy attempted to call 9-1-1, which was unsuccessful, and told his [redacted] to remain in the vehicle. As the suspects approached, the deputy opened his door and identified himself as a deputy sheriff. The suspects continued to approach as the deputy exited his vehicle with his firearm and identification. Again, the deputy identified himself as a deputy sheriff and told the suspects to back away.

The suspect made threats toward the deputy. The first suspect reached toward his waistband and pushed the deputy. Believing the first suspect was going to retrieve a weapon, or take his weapon, the deputy fired two rounds striking the suspect. Simultaneously, the second suspect, who was behind the first suspect, also had his hands concealed and began to move toward the deputy. Believing the second suspect was going to retrieve a weapon, or take his weapon, the deputy fired one round striking the second suspect.

Both suspects were transported to the hospital and received medical treatment for non-life threatening injuries.

The Committee determined the use of force in its totality was reasonable, necessary, and justified against the aggressive suspects. The Committee also determined the tactics used by the involved personnel were within the Department's training standards.

RECOMMENDATIONS:

The Committee recommended the unit commander, Captain Christopher P. Nee, conduct a tactical debriefing with the involved deputy regarding the circumstances of this incident.

MJR:JER:jer

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
ON-DUTY HIT SHOOTING
SH2285143

ADDENDUM

URN: 911-03674-0590-055
DATE / TIME: Saturday, March 26, 2011, 0155 hours
LOCATION: 230 South Rosemead Boulevard, Pasadena, 91107
SUBJECT: Mark Lewis MW/10-02-83, Aaron Beierschmitt MW/04-15-86
PERSONNEL: Deputy Robert Alvarez, #[redacted]

On November 29, 2012, the Executive Force Review Committee, which consisted of Commanders Michael Rothans, David Fender, and Buddy Goldman, reviewed the details of the on-duty deputy involved hit shooting documented in SH2285143. The committee requested clarifying information regarding the location of Suspect Lewis' and Suspect Beierschmitt's hands just prior to Deputy Alvarez firing his weapon. The committee also requested clarification as to the sequence of the shots fired by Deputy Alvarez. The committee delayed its final findings regarding the shooting until these questions were answered.

The following statements are summarized. Precise wording may be obtained by reviewing the digitally audio recorded interview located in the IAB audio files and/or the verbatim transcripts listed under the ***Transcriptions*** *section of the casebook.*

INVOLVED EMPLOYEE STATEMENTS:

Deputy Robert Alvarez

On December 3, 2012, Deputy Robert Alvarez was interviewed by Sergeant Sonja Bracken via conference call, along with his Attorney Audra Call. The following is a summary of the interview, which was digitally audio recorded.

Deputy Alvarez said Suspect Mark Lewis approached his (Deputy Alvarez') vehicle with his right hand by his waistband, under his shirt tail and his left hand out in front of him. Deputy Alvarez said Suspect Lewis lunged at him and as he (Deputy Alvarez) rocked backwards to avoid being hit, Suspect Lewis struck him on the left shoulder with his left hand. Deputy Alvarez said he fired his weapon twice, once Suspect Lewis struck him on his shoulder.

Deputy Alvarez said Suspect Aaron Beierschmitt was slightly staggered behind Suspect Lewis as they approached him. Deputy Alvarez said he saw Suspect Beierschmitt's right hand by his waistband but could not see his left hand due to it being partially blocked by Suspect Lewis' body. Deputy Alvarez said at the time he fired his weapon once at Suspect Beierschmitt, he only saw a silhouette lunging closer to his face and body. He said when he fired his weapon at Suspect Beierschmitt he could not see his hands.

Deputy Alvarez said he fired all three shots at the suspects within seconds of each other. Deputy Alvarez said he felt both suspects were lunging at him in an attempt to take his weapon or assault him, therefore he felt he was in a life threatening situation.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
JACQUELYN LACEY • Chief Deputy District Attorney
PATRICK R. DIXON • Assistant District Attorney

JANICE L. MAURIZI • Director

May 10, 2012

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #11-0240
L.A.S.D. File #011-03674-0590-055

Dear Captain Smith:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 26, 2011, non-fatal shooting of Mark Lewis and Aaron Beierschmitt by off-duty Los Angeles County Sheriff's Department (LASD) Deputy Robert J. Alvarez. We have concluded that Deputy Alvarez acted lawfully in self-defense.

The following analysis is based upon investigative reports, analyzed evidence reports and witness statements taken during the investigation by the LASD and submitted to this office by Detectives Traci Gonzales and Linda Muse. The District Attorney Command Center was notified of the shooting at approximately 3:44 a.m., on March 26, 2011. The District Attorney Response Team, comprised of Deputy District Attorney Jason Lustig and District Attorney Senior Investigator Heinz Naas, responded to the location. They were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene. Compelled statements were not considered in this analysis.

FACTUAL ANALYSIS

On March 26, 2011, at 1:20 a.m., Deputy Alvarez ended his shift at Temple City Sheriff's Station and drove away in his personal car in plain clothes. At approximately 1:30 a.m., he picked up a friend, [redacted] at her [redacted] residence. On their way to find a restaurant, Alvarez drove north on Rosemead Boulevard toward a Del Taco restaurant on Del Mar Boulevard in Pasadena. As they approached the Del Taco driveway, Alvarez heard a car horn honk behind them and saw a car rapidly approach, almost striking the rear of his car. Alvarez saw two males in the car with loud music playing. One of the males yelled, "What the fuck are you looking at? What the fuck? Get the fuck out of the way!" Another male said,

"Fuck you." The occupants of the car threw their hands up in what Alvarez described as an "irate manner." [redacted] asked why the occupants of the other car were yelling at them. One of the males continued to yell, "What the fuck?"

Believing that the other car was going to continue north on Rosemead Boulevard, Alvarez entered the Del Taco parking lot and stopped at the drive-through speaker. As he prepared to place an order, Alvarez heard, "Fuck you. Fuck this guy." Alvarez looked up and saw the same car behind them in the drive-through lane. The males continued to curse at him and loud music was still playing. [redacted] asked why they were following them. Alvarez told her not to worry about it.

When Alvarez looked in his rear view mirror, Mark Lewis said, "What the fuck are you looking at, bitch? Fuck you." Lewis exited the driver side and approached Alvarez' driver side, laughing and throwing up his hands. Lewis was repeating, "What the fuck are you looking at, bitch?" Lewis placed his hands in his long shirt. Alvarez heard another car door open and [redacted] said that another person (Aaron Beierschmitt) was exiting the car. Alvarez saw a shadow move behind him toward the passenger side of his car. Fearing that he was about to be shot, Alvarez placed his service weapon on his lap. Alvarez told [redacted] not to move.

Alvarez focused his attention on Lewis who was approaching his driver side yelling, "We're going to fuck you up." When Alvarez used his cell phone to call 9-1-1, Lewis said, "Oh, you going to call friends? They're not going to help you. We're going to fuck you up." Beierschmitt said, "We're going to fuck you up. I don't give a fuck who you call." Alvarez tried to request assistance from the operator, but later realized he had misdialed. Beierschmitt moved to the driver side and said, "Let's fuck him up. Let's go now." As the males approached him, Alvarez said through his open driver's door window, "Get the fuck away from my car! I'm an off-duty LASD Deputy Sheriff. Get the fuck away from my car!" Lewis yelled, "Fuck you! I don't give a fuck!" Beierschmitt yelled, "Fuck you! Let's fuck him up now."

Alvarez heard more voices coming from the other car and saw two more males inside. Those males said, "Yeah, fuck him up. Let's fuck him up." Lewis repeatedly raised his hands and put them in his waistband. Beierschmitt had his hands by his sides. As Lewis and Beierschmitt came closer to the bumper of his car, Alvarez dropped his cell phone, unholstered his service weapon and made it ready to fire.[1] Alvarez opened his driver's door slightly. Both males were next to his door. Lewis lifted his left hand up and moved his right hand to his waistband. Beierschmitt was standing behind the Lewis who said, "What'cha gonna do? We're going to fuck you up, bitch. Let's get him now." Lewis pushed open Alvarez' door. Alvarez got out, put his left hand up and pointed his weapon at the males. Alvarez ordered, "Get the fuck back! I'm an LASD off-duty deputy." Lewis replied, "Fuck you," and hit Alvarez' shoulder with his left hand while his right hand was under his shirt. Alvarez turned, leaned back and fired twice into Lewis' abdomen. When Lewis fell down, Beierschmitt moved toward Alvarez with his hands in his pockets. Alvarez fired once at Beierschmitt who fell down. One of the males in the rear seat

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[1] Alvarez was armed with a Beretta, 9mm, model 92FS, semiautomatic pistol.

of the vehicle yelled out, "What the fuck, fucker? Fuck you!" That male tried to exit the car, but Alvarez ordered him to stay in the car. The other male in the car stated, "Oh, they fucked up. They shouldn't have done that. They were in the wrong." While detaining the males at gunpoint, Alvarez got his cell phone from the car and called 9-1-1 to report the emergency. Shortly thereafter, California Highway Patrol officers and LASD deputies arrived and took all four males into custody. No weapons were recovered from any of the males or in their car.

When responding deputies asked Lewis where he was shot and who shot him, Lewis replied, "I don't know. He said he was an off-duty cop." While being detained in a patrol car, one of the males who had not approached Alvarez ([redacted]) said, "They shouldn't of done it."

Lewis and Beierschmitt were transported to Huntington Memorial Hospital. Lewis sustained gunshot wounds to the abdomen and left hand. Beierschmitt sustained one gunshot wound to the abdomen.

On March 31, 2011, in case number GA082883, the District Attorney's Office filed felony counts of assault on a peace officer and criminal threats against Lewis and Beierschmitt. A pretrial hearing is scheduled for May 15, 2012.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. *People v. Williams* (1977) 75 Cal.App.3d 731.)

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. *California Criminal Jury Instructions* 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

When the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v. Collins* (1961) 189 Cal. App.3d 575.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

CONCLUSION

The evidence examined in this investigation shows that Lewis and Beierschmitt repeatedly verbally threatened to assault Alvarez while they were stopped behind Alvarez's car in the Del Taco drive-through lane. When they exited their car and approached Alvarez, both males continued their verbal threats. Lewis and Beierschmitt added to the danger apparent to Alvarez by placing their hands in their clothing giving Alvarez every reason to believe that they were armed. When Lewis pushed open Alvarez' driver door, Alvarez got out, pointed his service weapon at them, clearly identified himself as an off-duty deputy sheriff and told them to get back. Despite these warnings, Lewis put one hand under his shirt and struck Alvarez with the other. In reasonable fear that Lewis was about to retrieve a weapon to cause him great bodily injury or death, Alvarez fired his service weapon twice at Lewis, who fell to the ground. With his hands in his pockets, Beierschmitt advanced on Alvarez. Reasonably believing that Beierschmitt too was armed and about to attack him, Alvarez fired once at Beierschmitt who retreated to the car, ending the immediate threat. Alvarez detained the males at gunpoint until responding law enforcement personnel took control of the incident.

The lawful use of self-defense does not require that the danger actually existed so long as the beliefs of the person acting in self-defense were reasonable. Under these circumstances, Deputy Alvarez' belief that Lewis and Beierschmitt were armed with deadly weapons was reasonable. The irrational, aggressive and provocative actions of Lewis and Beierschmitt placed Deputy Alvarez in reasonable fear of death or great bodily injury causing him to respond with deadly force.

Given the rapidly evolving, life threatening situation that confronted Deputy Alvarez, we conclude that he acted lawfully in self-defense. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By

JASON P. LUSTIG
Deputy District Attorney
(213) 974-3888

c: Deputy Robert J. Alvarez #[redacted]